

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

April 11, 2010

Dear Mr Stawick,

RE: RIN 3038-AC98, "Requirements for Processing, Clearing and Transfer of Customer Positions"

LCH.Clearnet Group Limited ("LCH.Clearnet" or the "Group") is pleased to respond to the request for comment by the Commodity Futures Trading Commission (the "CFTC" or "Commission") on RIN 3038-AC98, "Requirements for Processing, Clearing and Transfer of Customer Positions."¹

The Group strongly supports the policy goals underpinned both by the Proposing Release and the related statutory provisions contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

In its proposing release, the Commission proposes: the time frame for contracts to be submitted to a Derivatives Clearing Organization ("DCO"); standards for cleared products and for the prompt and efficient processing of contracts, agreements and transactions submitted for clearing; rules and procedures to facilitate clearing; and requirements for the transfer of customer positions.

We recognize the hard work undertaken by the Commission in order to develop these proposed rules and value its open and thoughtful approach in this task. We also appreciate the opportunity to comment on these important issues and set forth detailed comments on this rulemaking overleaf.

¹ RIN 3038-AC98, "Requirements for Processing, Clearing and Transfer of Customer Positions (the "Proposing Release").

Part 23 Swap Dealers and Major Swap Participants

23.506 Swap processing and clearing

- (b)(2) *This rule requires that if a swap is not subject to a mandatory clearing requirement pursuant to section 2(h)(1) of the Act, but is accepted for clearing by a Derivatives Clearing Organization (“DCO”) and the swap dealer or major swap participant and its counterparty agree that such swap will be submitted for clearing, they shall submit such swap for clearing not later than the next business day after execution of the swap or the agreement to clear, if later than execution.*

The Group understands why the CFTC would wish to reduce the timeframe for clearing, and believes that early submission to clearinghouses should be encouraged. Notwithstanding this, we do not believe that swaps that are not subject to mandatory clearing obligations should be subject to any timeline.

In the Group’s view it is likely that DCOs will clear swap trades that are not subject to the mandatory clearing obligation and should be able to accept such trades whenever they are submitted, provided that it has sufficient margin from both sides.

Part 37 Swap Execution Facilities

37.702 General Financial Integrity

- (b)(1-2) *In this subsection the Commission requires that Swap Execution Facilities must ensure the financial integrity of transactions cleared by DCOs. The Commission firstly requires that Swap Execution Facilities (“SEFs”) have the capacity to route transactions to a DCO in a manner acceptable to the DCO; secondly, that the SEF must coordinate with each DCO to which it submits transactions for clearing in the development of rules and procedures to facilitate prompt and efficient transaction processing.*

The Group concurs with all the provisions laid out in this section, but would make three additional observations: firstly we believe that it is of paramount importance that SEFs seeking access to DCOs first be required to meet all regulatory requirements. Secondly, since DCOs cannot be expected to run multiple application programming interfaces (API), such SEFs must code to each DCO’s API. Finally, we believe it would be appropriate to require that SEFs be required to treat DCOs on a non-discriminatory basis.

Part 38 Designated Contract Markets

38.601 Mandatory Clearing

- (a) & (b) *In this subsection the Commission requires that Designated Contract Markets (“DCMs”) must ensure the financial integrity of transactions cleared by DCOs. The Commission firstly requires that DCMs have the capacity to route transactions to a DCO in a manner acceptable to the DCO; secondly, that the DCM must coordinate with each DCO to which it submits transactions for clearing in the development of rules and procedures to facilitate prompt and efficient transaction processing.*

The Group concurs with all the provisions laid out in this section, but would make three additional observations: firstly we believe that it is of paramount importance that DCMs seeking access to DCOs first be required to meet all regulatory requirements. Secondly, since DCOs cannot be expected to run multiple application programming interfaces (API), such DCMs must code to each DCO’s API. Finally, we believe it would be appropriate to require that DCMs listing Swaps for clearing be required to treat DCOs on a non-discriminatory basis.

Part 39 Derivatives Clearing Organizations

39.12 Participant and Product Eligibility

- (b)(2) *This paragraph states that a DCO shall adopt rules providing that all swaps with the same terms and conditions, as defined by templates established under DCO rules, submitted to the DCO for clearing are economically equivalent with the DCO and may be offset with each other within the DCO.*

The Group concurs with this provision, but would request that the Commission clarify that a DCO providing economic offsets for swaps with the same terms and conditions will meet this requirement. In this way a DCO with Initial and Variation Margin methodologies identifying and providing offsets for any full or partial economic equivalence between such swaps would meet the requirement set forth by the Commission.

- (b)(3) *This paragraph requires that a DCO shall provide for non-discriminatory clearing of a swap executed bilaterally or on or subject to the rules of an unaffiliated swap executed contract market or DCM.*

In the Group’s view it is of paramount importance that DCOs provide open access to all appropriately regulated execution venues, such that particular execution venues are not advantaged or disadvantaged over others. For this reason we believe the Commission should clarify “non-discriminatory” to include cost, technology and other related considerations. Further, we would encourage the Commission to impose the reverse requirement on execution venues such as DCMs and SEFs, such that these are also required to provide trade feeds to DCOs on a non-discriminatory basis.

- (b)(5) *In this paragraph the Commission requires that a DCO shall select contract unit sizes and other terms and conditions that maximize liquidity, facilitate transparency in pricing, promote open access, and allow for effective risk management. To the extent appropriate to further these objections, the Commission requires that a DCO shall “select contract units for clearing purposes that are smaller than the contract units in which trades submitted for clearing were executed”.*

Whilst the Group is supportive of any measure that helps to maximize liquidity, facilitate transparency in pricing, promote open access, and allow for effective risk management, we do not believe that it is appropriate to require that a DCO shall select contract units for clearing purposes that are smaller than the contract units in which trades submitted for clearing were executed. DCOs clearing swaps should be able to accept such swaps in any size, and swaps submitted for clearing should not need to be broken down into sub units. Should the Commission seek to address the average size of exposures traded in the swaps market, we would submit that this would better be addressed in rules pertaining to trading and execution venues. We would therefore respectfully urge the Commission strike 39.12(b)(5).

- (b)(6)(i-iv) *This Section requires that a DCO clearing swaps shall have rules providing that, upon acceptance of a swap, (i) the original swap is extinguished, (ii) the original swap is replaced by equal and opposite swaps between clearing members and the DCO, (iii) all terms of the cleared swaps must conform to templates established under DCO rules and (iv) if a swap is cleared by a clearing member on behalf of a customer, all terms of the swap as carried in the customer account on the books of the clearing member must conform to the terms of the cleared swap established under the DCO’s rules.*

The Group is sympathetic to the Commission’s aims to ensure standardization and the proper management of reconciled books and records. Notwithstanding this, we would urge the Commission to amend this requirement such that the obligation to fulfill (b)(6)(i-iv) above would fall on the clearing member, rather than on the DCO. We believe that it would be more appropriate to impose such requirements on the clearing member since the provisions relate to the clearing members books and records – not to those of the DCO.

- (b)(7)(ii-iii) *Time frame for clearing. In subsections (b)(7)(ii) and (iii) the Commission requires that the DCO should have rules that provide that it will accept for clearing, immediately upon execution, all contracts, agreements and transactions that are listed for clearing by the DCO and which the swaps are executed on a SEF, a DCM or bilaterally.*

The Group concurs with the Commission’s intent to ensure the prompt and efficient processing of all contracts, agreements and transactions submitted to the DCO for clearing. We also agree with the provisions set forth under subparagraphs (A) to (C) of sections 39.12(b)(7)(ii) and 39.12(b)(7)(iii), however we must stress that in order to ensure the integrity of the clearinghouse, it is of paramount importance that the DCO has sufficient margins from clearing members before accepting such trades. For such reason, the DCO should not be required to accept any trades for clearing without

having received such margins. We would therefore urge the Commission amend subsections 39.12(b)(7)(ii) and 39.12(b)(7)(iii) as indicated below:

- (ii) *Transactions executed on or subject to the rules of a swap execution facility or designated contract market.* A derivatives clearing organization shall have rules that provide that the derivatives clearing organization will accept for clearing, immediately upon execution or as soon as reasonably practical thereafter, all contracts, agreements, and transactions that are listed for clearing by the derivatives clearing organization and for which sufficient margins have been received by the DCO.
- (iii) *Swaps not executed on or subject to the rules of a swap execution facility or a designated contract market subject to mandatory clearing.* A derivatives clearing organization shall have rules that provide that the derivatives clearing organization will accept for clearing, immediately upon execution or as soon as reasonably practical thereafter, all contracts, agreements, and transactions that are listed for clearing by the derivatives clearing organization and for which sufficient margins have been received by the DCO.

(b)(7)(iv) *In subsection (b)(7)(iv) the Commission requires that the DCO should have rules that provide that it will accept for clearing, immediately upon execution, all contracts, agreements and transactions that are listed for clearing by the DCO but which are not subject to mandatory clearing.*

The Group understands why the CFTC would wish to reduce the timeframe for clearing for swaps that are not subject to mandatory clearing, and believes that early submission to clearinghouses should be encouraged. Notwithstanding this, and as stated in 23.506(b)(2) above, we do not believe that swaps that are not subject to mandatory clearing obligations should be subject to any timeline.

In the Group's view it is likely that DCOs will clear swap trades that are not subject to the mandatory clearing obligation and should be able to accept such trades whenever they are submitted, provided that it has sufficient margin from both sides. For this reason we would urge the Commission to amend this section as indicated below:

- (iv) *Swaps not executed on or subject to the rules of a swap execution facility or a designated contract market and not subject to mandatory clearing.* A derivatives clearing organization shall have rules that provide that the derivatives clearing organization will accept for clearing, ~~no later than the close of business on the day of submission to the derivatives clearing organization~~, all swaps that are listed for clearing by the derivatives clearing organization and for which the DCO has received sufficient margins.

39.15 Treatment of Funds

- (d) *Transfer of Customer Positions In this section the Commission provides that a DCO shall have rules providing that, upon the request of a customer and subject to the consent of the receiving clearing member, the DCO will promptly transfer all or a portion of such customer's portfolio of positions and related funds from the carrying clearing member of the DCO to another clearing member of the DCO, without requiring the close-out and re-booking of the positions prior to the requested transfer.*

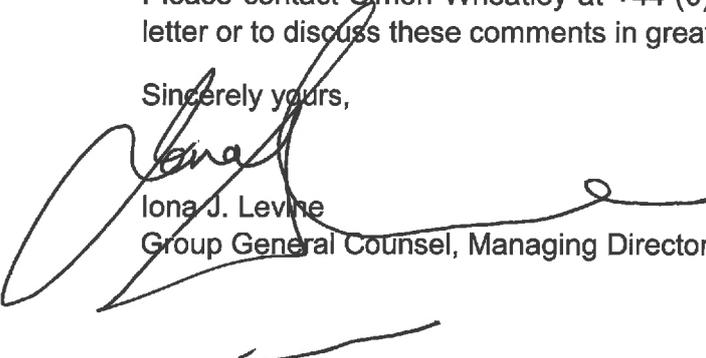
The Group concurs with the Commission's intent to ensure the prompt and efficient transfer of customer positions and related funds from one clearing member to another and is fully supportive of such requirements. Notwithstanding this, we believe this section should be amended to require that the transfer of positions and related funds be effected simultaneously. Absent such a provision we believe the DCO could be understood to be required to transfer either the positions or the funds, but not both, and such an obligation would expose the DCO to risk during the customer transfer.

We would also request that the Commission exempt a DCO offering client clearing in Europe and elsewhere under the Principal model from such requirements.

We appreciate the careful thought and consideration that the Commission has given to the rulemaking process and the open way in which it has consulted with market participants and other interested parties. We would be pleased to enter into a further dialogue with the Commission and its staff.

Please contact Simon Wheatley at +44 (0)207 426 7622 regarding any questions raised by this letter or to discuss these comments in greater detail.

Sincerely yours,



Iona J. Levine
Group General Counsel, Managing Director